IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 4022 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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JAWARLAL CHOGALAL SONI - Appellant(s)
Versus
VIMLABEN W/O JAWARLAL CHOGALALSONI - Defendant(s)

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Appearance :
MR MC SHAH for Appellant(s) : 1,
RULE SERVED for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 11/08/2006

ORAL JUDGMENT

1.0 By way of this appeal under Section 28 of the Hindu Marriage Act, the appellant has challenged the judgment and decree of the Hon'ble City Civil Court (No.12), Ahmedabad passed in H.M.P. No.298 of 1993 dated.

2.0 The brief facts of the case are that the present opponent had filed a petition for obtaining a decree of divorce. In the said

petition it was alleged by the opponent that the present appellant suffers from mental disorder and that the appellant had deserted the opponent and her daughter in the year 1989 without assigning any reason i.e. prior to the filing of the aforesaid petition.

2.1 In the said petition, after hearing the parties, the trial Court passed the judgment and decree which is under challenge in this appeal.

3.0 Heard learned Counsel for the appellant. Though, served none appears on behalf of the opponent. It is not in dispute that the appellant and the opponent got married in the year 27.11.1977 as per Hindu rites. The case of the opponent before the Tribunal was that the appellant had been torturing her mentally and physically and had deserted the opponent and her daughter in the year 1989. On perusal of the documents placed on record it appears that the appellant always remained dependent on his

father, and thereafter, he remained dependent on his elder brother Lalitbhai who had taken responsibility of maintaining him at the time of the division of joint property of their family. From the record it also transpires that the appellant had not earned anything in his life and he used to go and stay with his father-in-law for considerable time. Hence, the case of the opponent that in the year 1987 she along with the appellant left Madras with a view to settle down in Ahmedabad, since they were not treated well by the family members of the appellant after the death of her father-in-law, requires to be accepted. It appears that after staying at Ahmedabad for about two years, the appellant had suddenly left the Ahmedabad in the year 1989 and went to Madras. The said fact is not denied by the appellant. However, the appellant has not given any convincing reason in his cross-examination before the trial Court for suddenly deserting his wife and daughter. On the contrary, he practically accepted that he had not

cared for the well-being of his wife and daughter after he left the Ahmedabad in the year 1989. Therefore, in view of the fact that the the opponent and her daughter have been deserted by the appellant without any reason and since then the opponent and her daughter are living on their own, the Tribunal has justified in granting decree of divorce. I am, therefore, in complete agreement with the reasoning given and the findings arrived at by the Tribunal and find no reason to interfere in this appeal.

4.0 Hence, the appeal stands dismissed. No order as to costs.

(K.S. Jhaveri,J.)

Umesh/-